IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 721/06
(Kamlendra Singh Vs. State of Rajasthan & Anr.)

Date of Order : 24/11/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Mukesh Vyas for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.
Mr. R.K.Charan for the non-petitioner No.2.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner seeks quashing of the criminal proceeding in criminal complaint case No. 1642/04.

I have heard learned counsel for the parties and carefully gone through the complaint filed by complainant non-petitioner.

The non-petitioner No.2 filed a complaint before the Additional Judicial Magistrate No.3, Jodhpur against the petitioner, wherein it is averred that the complainant invested money in the plantation scheme floated by non-petitioner and in return the non-petitioner issued a post dated cheque for a sum of Rs. 1,67,000/- in favour of the complainant duly signed by

him drawn on State Bank of Bikaner and Jaipur, Gopinath Marg, Jaipur. The cheque on being presented to the bank for encashment, dishonoured with the endorsement of 'account closed'. A notice demanding the cheque amount was sent by the complainant to the petitioner, however, the notice was received back with the endorsement 'refused' and thereafter the complaint has been filed.

It is contended by learned counsel for the petitioner that the petitioner is said to be one of the Directors of the Company and without there being specific averment in the complaint that the petitioner is incharge of and responsible for the conduct of the business of the company, the proceeding against him under Section 138 of the Negotiable Instruments Act (for short 'the Act' hereinafter) is not maintainable. Learned counsel for the petitioners has relied on decision of Hon'ble Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Anr. 2005 (2) W.L.C. (SC) Criminal, 490.

It was further contended that the petitioner ceased to be the Director of the company and therefore, it cannot be said that the cheque in question has been issued to discharge the debt or liability legally enforceable.

These questions are to be gone into at the time of adducing the evidence by the parties or are to be examined at the final stage of the case as to whether on the relevant date of

issuance of the cheque, whether the petitioner was the Director of the company, incharge of and responsible for the conduct of the business of the company or that the petitioner ceased to be the Director of the company and the cheque in question has been issued to discharge the debt or liability legally enforceable or not.

In the instant case, the petitioner is the signatory of the cheque in question as averred in the complaint itself, and therefore, he is responsible for the incriminating act and will be covered under sub-section (2) of Section 141 as has been held by Hon'ble Supreme Court in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Anr. (supra). In this view of the matter, the judgment relied on by the counsel for the petitioner goes against the petitioner.

Learned counsel for the petitioner further contended that in the instant case the account has been closed by the petitioner and therefore, the petitioner is also not liable for prosecution under the Negotiable Instruments Act.

It is settled law that the return of a cheque by the bank unpaid on the ground that the account is closed would mean that the cheque is returned as unpaid on the ground that the amount of money standing to the credit of that account is insufficient to honour the cheque, hence it would certainly be an offence under Section 138.

In NEPC Micon Ltd. And Others Vs. Magma Leasing Ltd., (1999) 4 SCC 253, Hon'ble Supreme Court held that the return of a cheque by the bank unpaid on the ground that the "account is closed" would mean that the cheque is returned as unpaid on the ground that "the amount of money standing to the credit of that account is insufficient to honour the cheque". The reason is that the cheque was dishonoured as the amount of money standing to the credit of "that account" was "nil" at the relevant time apart from it being closed. The closure of the account would be an eventuality after the entire amount in the account is withdrawn. It means that there was no amount in the credit of "that account" on the relevant date when the cheque was presented for honouring the same. The expression "the amount of money... is insufficient to honour the cheque" is a genus of which the expression "that account being closed" is a specie. After issuing the cheque drawn on an account maintained, if the drawer closes "that account" apart from the fact that it may amount to another offence, it would certainly be an offence under Section 138. Hon'ble Supreme Court further held that the dishonouring of the cheque on the ground that the account is closed is the consequence of the act of the drawer rendering his account to a cipher. Hence, reading Sections 138 and 140 together, it would be clear that dishonour of the cheque by a bank on the ground that the account is closed would be

covered by the phrase "the amount of money standing to the credit of that account is insufficient to honour the cheque". It has been further held that it would only encourage dishonest persons to issue cheques and before presentation of the cheque close "that account" and thereby escape from the penal consequence of Section 138.

In view of the aforesaid discussion, the petition has no force and is therefore, dismissed. Interim stay order dated 1.6.2006 stands vacated and Stay petition is dismissed.

(H.R.PANWAR),J.

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